

1 JUDGE SIPPEL: Well --

2 MR. BECKNER: They said they don't have any plans.
3 Two weeks after they filed that document with the
4 Commission, less than two weeks, they hard-wired the Europa.
5 So the question is when they told the Commission "we don't
6 have any plans, we're not going to do it," is that statement
7 true or false?

8 The fact that they did the Europa moments later,
9 and in fact had had an agreement to do the Europa prior to
10 that, it was found out, suggests that the statement is not
11 true.

12 JUDGE SIPPEL: Well, as I say, first of all, I
13 don't see -- you keep qualifying all of this with the
14 characterization of misrepresentations in the caption of the
15 pleading or in pleadings which are captioned for this case.
16 I take it the second -- my second statement is the correct
17 statement. But I don't see that kind of a characterization
18 in the candor issue that's cited here. They don't make that
19 kind of a refinement for one thing.

20 And, secondly, if everything that you say is true,
21 then the factual presentation was in a context to file a
22 timely motion to add issues. Somebody had the opportunity
23 to do that, and the time went by, and that's just the way
24 the rules read.

25 MR. SPITZER: Your Honor, can I add, only because

1 I just want to clarify Mr. Beckner's statement that he
2 lifted certain critical words which were "unless authorized
3 by law" with respect to the statements made by Liberty with
4 respect to its obligation not to make any hard-wire
5 connections. It was the obligation we will not make any
6 hard-wire connections unless they are authorized by law.
7 And he did not put those words in and that --

8 MR. BECKNER: They are not in the papers.

9 MR. SPITZER: Well --

10 MR. BECKNER: Authorized by law is not in the
11 papers.

12 MR. SPITZER: Mr. Beckner, they are there.

13 MR. BECKNER: Authorized is in the papers.

14 JUDGE SIPPEL: All right.

15 MR. SPITZER: Anyway, I think we have spoken.

16 JUDGE SIPPEL: Yes. As I said, you know, if you
17 feel that, you know, on a different day that I will look at
18 it differently and you want lay it out in a different way,
19 you know, very clearly in a document, I will look at it
20 again. But I feel very strongly sitting here today that I
21 am right in how I ruled n this one.

22 Now, having said that, I don't have anything more
23 to say. Does anybody -- yes, ma'am?

24 MS. KIDDOO: Your Honor, my name is Jean Kiddoo,
25 and I am sitting in here observing this hearing on behalf of

1 Freedom New York.

2 We filed an opposition to Time Warner's motion to
3 enlarge the proceeding here, and I filed at the same time a
4 motion for limited intervention in the proceeding in order
5 to file that response. I would appreciate it, since it
6 looks like there is now going to be an additional round of
7 comments, if you would rule on our motion for limited
8 intervention so that I could be included on the service
9 list. Time Warner was kind enough to serve me with its
10 paper yesterday, but I did not receive a service copy from
11 the FCC staff, and would appreciate it if could be included
12 for purposes of the next round of comments on motions to
13 enlarge.

14 JUDGE SIPPEL: Well, I am sure Mr. Begleiter will
15 get you copies of anything that the Bureau gives on this
16 issue. I don't want to get into intervening -- granting
17 intervening motions until there has been a full round of
18 pleadings on it. I mean, there are specific standards for
19 doing that even if it is on a limited basis.

20 And the reason that I am deferring on that right
21 now is because I -- of what I said earlier, I need to see
22 these agreements. I mean, if I turn -- if I don't add the
23 issue then, you know, who needs intervention.

24 MS. KIDDOO: No, Your Honor, if you don't add the
25 issue, my intervention would certainly cease at that time

1 because none of the issues that were designated in the HDO
2 pertain to Freedom New York.

3 My concern is the round of pleadings that have
4 been occurring since Time Warner made a motion to enlarge,
5 to add issues that directly concern Freedom New York. I
6 would like to be permitted, (a) to have my opposition to
7 that motion considered as part of the record by you, and
8 also I would anticipate that, to the extent that a reply
9 needs to be filed to what the staff has filed yesterday, and
10 what Time Warner filed yesterday in terms of adding a new
11 issue concerning real party-in-interest, that we may well
12 want to respond to that as well. As a nonparty, I am just
13 not sure that I can do that.

14 JUDGE SIPPEL: Well, you are raising the question
15 properly.

16 Mr. Weber?

17 MR. WEBER: Well, I mean, the Bureau certainly has
18 no objection to seeing that Ms. Kiddoo gets a courtesy copy.
19 I mean, they are public documents anyway, and they certainly
20 would have access to them, but we could get them a courtesy
21 copy, and will see that they get one immediately.

22 JUDGE SIPPEL: What about a -- what about her
23 motion to intervene? I mean, I have to rule on that motion.
24 I have to tell her yes or no. What would the Bureau's
25 position be with respect to her coming in simply for the

1 purposes of filing pleadings, participating in this round of
2 pleadings on the real party-in-interest issue?

3 MR. WEBER: Again, I guess our hands are kind of
4 tied until we have seen the agreement as well. I mean, we
5 could say tentatively that we don't object to their
6 intervention. But, again, not knowing --

7 MS. KIDDOO: I fail to see the relevance of the
8 question of what the agreements say to whether or not I
9 should be permitted to participate with respect to filing an
10 opposition to your motion to add an issue to this proceeding
11 which directly concerns Freedom New York.

12 JUDGE SIPPEL: My immediate reaction to that was I
13 wanted to see the agreements. I don't know if it will be
14 necessary to take up your time and efforts and get more
15 pleadings in on the record here, but I am looking at this a
16 little bit differently now. I am hearing what you are
17 saying.

18 Let me ask Mr. Beckner.

19 MR. BECKNER: Your Honor, we don't have any
20 objection to Freedom's intervening for the purpose that they
21 say, and I am assuming then that if you were to grant the
22 motion they would file their paper on the same day that
23 Bartholdi would file this paper, and then we and the Bureau
24 would file our replies and that would be the end of the
25 pleading cycle.

1 JUDGE SIPPEL: I think that's what Ms. Kiddoo is
2 saying.

3 MS. KIDDOO: Yes, that's correct.

4 JUDGE SIPPEL: Mr. Holt?

5 MR. HOLT: I do not think that Cablevision has a
6 problem with that either. I suppose would that mean that
7 Freedom is not going to raise confidentiality objections
8 insofar as the distribution of these materials within the
9 confines of the protective order?

10 MS. KIDDOO: I can't speak to that until I consult
11 with my client.

12 MR. SPITZER: They are totally separate issues,
13 Your Honor.

14 JUDGE SIPPEL: Well, they are. We need Freedom's
15 view on that anyway. I mean, either directly or indirectly
16 we need their views on it.

17 MS. KIDDOO: Clearly, they will need to consent to
18 any public release of those documents.

19 JUDGE SIPPEL: Well, that's right, but that's why
20 I am trying to -- that's why I am being very careful before
21 I am going to let you intervene as a party, because I am
22 going to have enough trouble wrestling with these issues if
23 this is going to become a problem. I mean, if
24 confidentiality is going to become a problem.

25 Let me correct myself on that. I don't mean

1 confidentiality, because confidentiality is really going to
2 be covered by the confidentiality agreement. It would be
3 something of a -- even something narrower than just
4 confidentiality. It would have to come down to a privilege.

5 Now, I'm sorry, let me -- I am passing off on too
6 many things at once. Does Liberty have any objection -- any
7 position with respect to this?

8 MR. SPITZER: We fully support the motion, Your
9 Honor.

10 JUDGE SIPPEL: All right. I am going to ask the
11 Bureau again, do you see -- all she is asking for is just an
12 opportunity for me to accept on the record the opposition --
13 well, I'm not sure -- the pleading that she initially filed
14 with her motion to intervene, plus participate in this round
15 of pleadings.

16 Now, it seems to me that we would -- that in the
17 worst of all possible worlds, we're just going to get a
18 different -- a different vantage point on how Freedom sees
19 this situation, and they are one of the parties really that
20 is considered to be within this penumbra of real party-in-
21 interest, so it might be very helpful to get their views.

22 MR. WEBER: That is a point well taken, Your
23 Honor, and we did not initially oppose their intervention,
24 and we won't at this time either.

25 JUDGE SIPPEL: All right. Okay, I am going to

1 grant your motion for the limited purpose, and if the issue
2 is added, you are going to have to again file a motion for
3 full participation at that time.

4 MS. KIDDOO: That's what we would anticipate, Your
5 Honor.

6 JUDGE SIPPEL: And, of course, if the motion is
7 not added, then you are home free.

8 MS. KIDDOO: Goodbye.

9 JUDGE SIPPEL: That's it.

10 MS. KIDDOO: Thank you.

11 JUDGE SIPPEL: That's all I have.

12 MR. WEBER: I have one final point to raise.

13 We have learned that a few parties have contacted
14 you personally or directly, and we would just request that
15 if that gets done again, that all parties or at least a
16 representative from all parties be on the line as well in
17 the form of a conference call.

18 JUDGE SIPPEL: Does this have to do with the two-
19 day extension?

20 MR. WEBER: Yes, Your Honor.

21 JUDGE SIPPEL: Well --

22 MR. WEBER: That and -- well, yes, the two-day
23 extension, that's correct.

24 JUDGE SIPPEL: Well, I suppose that I could have
25 reserved a ruling on that until the following morning. But

1 my secretary had a car pool that she had to coordinate and
2 it was done at the end of the day. And I mean, it's just a
3 question of two days because of some confusion in
4 communications. And the New York attorneys didn't get
5 information as quickly as the Washington attorneys did.
6 Probably the first time that's ever happened, but that was
7 my call. I will be more cautious about that in the future.

8 But, again, I don't think that things like that
9 are going to happen again. But they may, they may, they
10 may. And I will do my utmost to see that everybody gets
11 wired in on the call when I make a decision.

12 And I also apologize. I had meant to get that
13 down in writing immediately the next morning, but I got
14 distracted by other things.

15 MR. BECKNER: Speaking for us, Your Honor, the
16 four of us in our office who are on the papers in this case,
17 so if somebody needs to make a call to you, I am sure that
18 they can get one of the four of us on the phone without, you
19 know, any difficulty at all or delay if somebody needs to
20 call you about anything.

21 JUDGE SIPPEL: You are joining in what Mr. Weber
22 is asking?

23 MR. BECKNER: Well, I just think it -- well, the
24 service, it looks harder, but in the end it makes it easier.

25 JUDGE SIPPEL: I hear you, and you are both right.

1 You are both right. But we will be a little more cautious
2 in the future if that happens.

3 I don't think -- well, I don't think I need to say
4 anything more with respect to the -- there is going to be in
5 camera treatment with respect to the -- with respect to
6 these agreements. Obviously, you have to set forth the
7 reasons as to why, some legal analysis in terms of why you
8 feel it needs in camera treatment.

9 So, that, again, can be done in the form of a
10 letter, and you know what my feelings are on that, what I
11 would like to see happen.

12 I think this is it. It's been a very productive
13 conference. Just remember these dates. And I will get an
14 order out and try and cover everything here that I think
15 needs to be covered in a written work, but hopefully you
16 won't see anything new.

17 Thank you very much.

18 (Chorus of thanks.)

19 JUDGE SIPPEL: Off the record.

20 (Whereupon, at 3:43 p.m., the hearing was
21 concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT 96-41
CASE TITLE: Liberty Cable Co., Inc.
HEARING DATE: May 15, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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